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Before the  
SURFACE TRANSPORTATION BOARD



Ex Parte No. 665  
RAIL TRANSPORTATION OF GRAIN

SUPPLEMENTAL COMMENTS

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John D. Fitzgerald,<sup>1/</sup> for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), submits these supplemental comments in response to the general invitation by the Board in its decision served November 7, 2006.

1. The Board on July 28, 2006, issued a press release indicating its intent to hold a hearing in the Fall on certain issues related to the rail transportation of grain. The press release was not accompanied by a docket number or notice of a proceeding. It was issued by Board staff at a time of member and Chairman vacancy.<sup>2/</sup> The press release referred to the June 21, 2006 preliminary observations by the U.S. Government Accountability Office (GAO), concerning rail grain rates, particularly in the U.S. Northwest. The Board indicated the public hearing would be held after GAO released its final report.

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<sup>1/</sup> General Chairman for United Transportation Union, on lines of BNSF Railway Company, with offices at 400 E. Evergreen Blvd., Vancouver WA 98660.

<sup>2/</sup> STB News, No. 06-12, issued July 28, 2006, by Dennis Watson.

2. The Board on October 11, 2006, instituted its proceeding to examine the final GAO report. UTU/GO-386 presented a written statement at the November 2, 2006 hearing, challenging certain aspects of the GAO rail rate data.

3. There is no indication by the Board as to the purpose of the inquiry into grain transportation, other than to examine the final GAO report. The statements presented at the November 2 hearing were primarily directed to grain originating in the Northwest. The Board is certainly aware, from public comments elsewhere, that interests in the involved territory, particularly embracing North Dakota, and perhaps adjoining states, are understood to have under consideration the submission of a formal complaint to the Board regarding rail grain rates. The Board should not in advance prejudge the issues for such a hypothetical complaint case, or even define what might be relevant issues, by offering views at this time on grain transportation in that area. Moreover, it would be improper for speculative Board views to encourage public funding for prospective legal and cost consultant services for such complaint case; and for rail parties defending rail rates, perhaps along with their intervenors (including rail employees), to improvidently incur expenses for such litigation.

4. The last general investigation of the U.S. grain rail rate structure, embracing the involved area, as well as to and from the Northwest ports, is believed to have been that conducted in Investigation of Railroad Frt. Rate Structure, 345 I.C.C. 423 (1973),<sup>3/</sup> and Investigation of Railroad Frt. Rate Structure-

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<sup>3/</sup> Ex Parte No. 270 (Sub-No. 1A), Export-Import Rates and Charges-Pacific Coast Ports.

<sup>4/</sup>  
Grain, 345 I.C.C. 2977 (1979). Although there were other proceedings, and undoubtedly there have been important changes since the 4-R and Staggers legislation, the involved citations illustrate the complexity and interrelated nature of grain rates and grain transportation.

5. The Board's chairman indicated at the hearing that a meeting of the National Grain Car Council had been held the previous day; and elsewhere advised a meeting of the Railroad-Shipper Transportation Advisory Council (RSTAC) had been held thereafter. Unfortunately, the Chairman at this time has neither followed the prior practice of issuing notices of the grain meetings,<sup>5/</sup> nor published the minutes of RSTAC meeting, both of which are important to the public and for rail carrier employees.

Respectfully submitted



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<sup>4/</sup> Ex Parte No. 270 (Sub-No. 9).

<sup>5/</sup> See: Ex Parte No. 519 (Sub-No. 3), Notice of National Grain Car Council Meeting (served April 10, 2006).